

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	CASE NO. 23-30023
CenterPointe Hotels @ Texas II, LP, et al.,	§	
	§	CHAPTER 11
DEBTOR(S)	§	
	§	(Joint Administration Requested)

**MOTION TO CONFIRM DEFAULT
AND PROCEED WITH CONTRACTUAL REMEDIES**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

COMES NOW ZSBNP, LLC (“ZSBNP”), secured creditor to CenterPointe Hotels @ Texas II, LP (“Centerpointe Hotels”) and files this Motion to Confirm Default and Proceed with Contractual Remedies and would respectfully show as follows:

SUMMARY

- Debtor failed to pay the \$12,000.00 tax escrow or the \$37,500.00 payment to ZSBNP due for December 2023 and January 2024, despite apparent funds to do so.
- An Independent Auditor was required to be retained several months ago in May 2023, yet none has been retained or been provided documents to investigate as agreed upon by the Mediated Settlement Agreement (which plan incorporates).
- ZSBNP believes Debtor is in Default of the Plan and Confirmation Order and provided Notice of Default December 4, 2023 (DK# 190) and again January 10, 2024 (adding failure to pay December 2023 January 2024). Debtor has argued ZSBNP is precluded from moving forward with remedies by the plan injunction. ZSBNP disagrees but asks the Court to review and confirm to avoid

unnecessary litigation at a later date.

- ***Prayer:*** ZSBNP prays the Court i) Confirm Debtor is in Default of the Plan and Confirmation Order (which incorporated the Mediated Settlement Agreement, ii) Confirm the plan injunction does not preclude ZSBNP from moving forward under its Notice of Default and Intent to Accelerate, iii) Confirm ZSBNP has provided Debtor proper notice(s) of the Default(s), and iv) for such further and other relief as the Court deems just.

REVIEW

1. ZSBNP believes Centerpointe Hotels is in Default of the plan and prior Mediated Settlement Agreement.

2. ZSBNP has previously filed a Notice of Default in this case December 4, 2023. **DK# 190**. However, Debtor cured one of the major issues of that notice (failure to provide insurance with ZSBNP listed as loss payee).

Default 1: Payment Default

3. Thereafter, Debtor did not make either the December \$12,000.00 tax escrow payment to ZSBNP or the \$37,500.00 regular monthly payment or the January 2024 payments in the same amounts.

4. Under the Mediated Settlement Agreement, these payments would be due but only if sufficient funds were available under the waterfall schedule as found in paragraph 6 of the Mediated Settlement Agreement, snapshot below:

6. Monthly cash flow will be applied as follows:

- a. First, to pay all ongoing property expenses (including such amounts as the manager determines are owed as monthly payments on the EIDL loan) as and when due;
- b. Second, to pay the Independent Auditor;
- c. Third, to establish a cash reserve, which together with all cash reserves on hand, totals \$100,000.00;
- d. Fourth, to deposit \$12,000.00 per month in a property tax escrow;
- e. Fifth, to pay ZSBNP \$37,500.00, which amount will be applied first to interest and then to principal on the ZSBNP loans; all amounts applied to the ZSBNP loans will be applied pro rata between the two loans;

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- f. Sixth, to pay preferred returns for the month to the holders of equity in the amounts determined by the pre-petition LP agreement;
 - g. Seventh, 40% to the Guillory Parties and 60% to the Lee Parties.

5. ZSBNP reflects that through January 12, 2024, Debtors had \$306,824.37 in MCB account ending in 2462 and \$47,752.15 in two other Wells Fargo Accounts ending in 8495 and 1613, or \$354,576.52. The limited partners of Debtor have also filed a pending motion to compel Debtor's performance of the Mediated Settlement Agreement and Court Approved Plan which asserts that Debtors' managers are, and have been since receiving such funds, also holding unaccounted for Economic Injury Disaster Relief Loan (EIDL) funds belonging to Debtor in non-Debtor/third party accounts. Because of Debtors' refusal to implement the independent auditor provisions of the Mediated Settlement Agreement and approved Plan, the current amount and any use of these EIDL funds are unliquidated

and unaccounted for at this time, but amounted to over several hundred thousand of dollars when issued by the SBA administration..

6. It appears the Debtors have been operating profitably and there were more than sufficient funds to pay the December 2023 and January 2024 tax escrow payments of \$12,000.00 and the \$37,500.00 payments to ZSBNP. The MSA provided for a \$100,000.00 cash reserve and it appears Debtors had more than triple that amount, yet failed to remit payment to ZSBNP as required under the MSA.

Default 2: No Independent Auditor

7. Further, under the Mediated Settlement Agreement, the Guillory Parties were to select an Independent Auditor by May 25, 2023 and such auditor was to be retained “immediately upon selection”. **Mediated Settlement Agreement, paragraph 4.** Paragraph 9 of the agreement required the Guillory parties to promptly provide the Independent Auditor with all books, records, and accounts of any entity under their control. Promptly was defined as not later than 21 days of receipt of the request.

8. To date – there is no Independent Auditor and the Guillory Parties have not turned over the documents and records in accordance with the Mediated Settlement Agreement. This is now approximately 8 months after the required date for such occurrences.

9. On January 3, 2024, separate creditor George lee, Paul Lee, Jack Lee, and Agama Properties, LLC filed their own Motion to Enforce Plan/MSA also noting that despite being several months past the provided date to do so, no Independent Auditor was even in place, let alone being provided the documentation to conduct the agreed upon review of the financials of the Debtor. It appears that Christopher Boatcallie, of PKF

Texas, was *selected* as the proposed auditor, but to date has not been retained nor is actively reviewing the records as agreed upon by the Parties. This is a breach of the plan and Mediated Settlement Agreement, one which ZSBNP has already provided notice of in its Notice of Default and Intent to Accelerate as dated December 4, 2023 – specifically noting the failure to retain the Independent Auditor. DK# 19, pp. 3-4.

10. In addition to its prior December 4, 2023 Notice of Default (which is well past reasonable time to cure and has not been fully cured), ZSBNP sent Debtor and Debtor’s counsel another notice of Default January 10, 2024 noting the failure to pay the December 2023 and January 2024 \$12,000.00 tax escrow and \$37,500.00 payments to ZSBNP despite having the funds to do so.

11. Despite the clear defaults Debtor has claimed ZSBNP is barred from pursuing foreclosure by the plan injunction.

12. ZSBNP disagrees as the Injunction language excepts “obligations issued or required to be paid pursuant to the Plan or Confirmation Order.”

F. Injunction

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been satisfied, released, discharged, or are subject to exculpation are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of, in connection with, or with respect to any such Claims or Interests unless such Holder has filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding an indication of a Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with, or with respect to any such Claims or Interests released or settled pursuant to the Plan.

Upon Confirmation of the Plan, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, principals, and direct and indirect Affiliates shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan. Each Holder of any Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in the Plan.

13. Otherwise, Debtor could default with no recourse.

14. ZSBNP asks the Court to review and enter order confirming the Default(s) and ZSBNP's right to proceed.

Wherefore, premises considered, ZSBNP prays the Court i) Confirm Debtor is in Default of the Plan and Confirmation Order (which incorporated the Mediated Settlement Agreement, ii) Confirm the plan injunction does not preclude ZSBNP from moving forward under its Notice of Default and Intent to Accelerate, iii) Confirm ZSBNP has provided Debtor proper notice(s) of the Default(s), and iv) for such further and other relief as the Court deems just.

Respectfully Submitted,

Hughes Watters & Askanase

/s/ Michael Weems

Michael Weems

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Attorney for ZSBNP, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the parties listed in the attached list by United States Mail, first class, postage prepaid or by ECF transmission or BNC noticing on all Pacer Systems participants in these bankruptcy cases, on January 18, 2024.

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Label Matrix for local noticing 0541-4 Case 23-30023 Southern District of Texas Houston Mon Mar 6 12:00:22 CST 2023	Agama Properties, LLC c/o Thane Tyler Sponsel III Sponsel Miller Greenberg PLLC 50 Briar Hollow Lane Suite 370 West Houston, TX 77027-9300	CenterPointe Hotels @ Texas II, LP 3906 Brookston Street Houston, TX 77045-3410
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

De Lage Landen Financial
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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(d)ZSENP, LLC
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End of Label Matrix	
Mailable recipients	128
Bypassed recipients	2
Total	130